

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Brattleboro Memorial Hospital,)	
Construction of Four-Story Medical)	Docket No. GMCB-001-16con
Office Building and Replacement Boilers)	
)	
_____)	

STATEMENT OF DECISION AND ORDER

Introduction

Brattleboro Memorial Hospital (BMH, the hospital, or the applicant) requests a certificate of need (CON) to demolish a two-story building and build a new four-story building on the same site. The ground floor of the new building will house central sterile processing and cardiac rehabilitation; the first floor will house a new operating room (OR) suite relocated from the main hospital; the second floor will house medical offices for surgical staff and exam rooms, and the third floor will house internal medicine office space and exam rooms. The project includes the renovation of 6,518 square feet of vacated space and 4,809 square feet of connecting hallways from the main hospital to the new building, and replacement of three boilers that provide the heating and cooling for the hospital complex. The cost of the project is \$22,692,789.

For the reasons outlined below and subject to the conditions contained herein, we approve the application.

Jurisdiction

The Board has jurisdiction over the CON process pursuant to 18 V.S.A. § 9375(b)(1). The proposed project is subject to CON review because its cost exceeds \$3 million. 18 V.S.A. § 9434(b)(1).

Procedural History

On January 22, 2016, BMH filed a Letter of Intent with the Board to build a new four-story medical office building, renovate the existing operating room suite and perioperative area located in the main hospital. and to replace the hospital's three boilers. BMH filed a certificate of need application on December 29, 2016. The Board published notice of the application on its website on January 3, 2017. On January 17, 2017, the Office of the Health Care Advocate filed Notice of Intervention. After requesting and receiving additional information from the applicant, the Board closed the application on July 12, 2017.

Findings of Fact

1. The project consists of four components that include new construction, renovations to existing space within the main hospital, and the relocation of certain services.

2. In the first component, BMH seeks to demolish a two-story building and build a new four-story 20,180 square foot building on the same site to be called the Ronald Read Pavilion (Read Pavilion). Application (App.), Tab 2 at 2. The ground floor of the Read Pavilion will house central sterile processing relocated from the main hospital, and cardiac rehabilitation relocated from a small area in the hospital basement, below the existing perioperative space. A new Operating Room (OR) suite, relocated from the main hospital will occupy the first floor. Medical offices/exam rooms for surgical staff will occupy the second floor. Internal medicine office space and exam rooms of the Brattleboro Internal Medicine practice will be relocated from the Gannet Building and will occupy the third floor. App., Tab 2 at 4-5.

3. The second component includes renovations to 6,518 square feet of the main hospital adjacent to the new Read Pavilion that now houses the perioperative services and operating room area. Renovations include relocation of the anesthesia workroom and equipment storage, the post-anesthesia care unit (PACU), the endoscopy, the minor procedure suite and pharmacy. The renovations will create space for each function that is properly sized, is more efficiently laid out, more accessible, more comfortable and easier for patients and staff to navigate.

4. The third component includes the purchase and installation of three new boilers to replace two installed in 1979 and one in 1996, which are at the end of their useful life of 25 years. Transcript (TR) at 20.

5. The fourth component relocates two primary care practices (Brattleboro Family Medicine located at 53 Fairview Street, and Maplewood Family Practice located at 120 Maple Street) to space on the on the second floor of the Gannet Building vacated by Brattleboro Internal Medicine, joining an existing primary care practice currently housed on the same floor. The vacated medical office space on Fairview Street will be repurposed for other hospital functions; the hospital explained in its application that it will be used as expanded space for the Community Health Team and administrative offices, *see* App., Tab 2 at 6, but during the hearing, stated it may be used for a dental clinic or daycare. TR. at 48.

6. The three existing ORs are undersized and do not meet Facility Guidelines Institute (FGI) requirements. The new ORs will each be approximately 600 square feet and meet FGI guidelines. App., Tab 2 at 4; Response (Resp.) (April 7, 2017) at 5. Annual volumes for the three ORs are projected to increase a modest number from 2,374 in years 1 and 2, to 2,393 in years 3 and 4. No increases in volumes are projected in the two procedure rooms between year 1 and 4. Resp. (April 7, 2017) at 2. The hospital bases its conservative projections on its location in a “no growth” area, with a stable population base in Brattleboro and surrounding areas, despite the loss of jobs due to the closing of Vermont Yankee. TR. at 34-37.

7. The project increases the number of pre- and post-op beds located in the perioperative area in the main hospital from 18 to 21. The three additional beds are not expected to increase volume but are necessary to improve flow and flexibility to accommodate current volumes. Resp. (April 7, 2017) at 2-3.

8. No diagnostic or therapeutic equipment is being purchased as part of this project, except as necessary to replace current equipment that has reached the end of its usable life. App., Tab 3 at 12.

9. The structures housing the current perioperative services, minor procedure rooms, PACU, Ambulatory Care Unit (ACU), anesthesia office and workroom, all equipment and supply storage for the ORs and procedure rooms, and Central Sterile Processing were built in 1964. The structure housing the three existing ORs was built in 1950. These spaces have been continuously renovated without expansion in an attempt to accommodate increased patient volume, advances in technology, and the need for increased storage and accommodate clinical requirements. The three existing ORs are located directly above the boiler plant which creates unacceptable temperature fluctuations in the ORs and vibrations felt in the ORs whenever the boilers go on and off. App., Tab 3 at 1, 2, 5; Tab 2 at 5. The existing ORs and related perioperative services in the main hospital are cramped and do not meet current FGI Guidelines. App., Tab 3 at 11.

10. The Central Sterile Processing area is now located in cramped space along a hallway between the ACU and PACU which permits sterile and dirty surgical equipment to travel along the same hallway as patients going to and from the ORs, endoscopy and minor procedure rooms, thus increasing the risk of infection. The new space creates an efficient clean-to-dirty flow of surgical equipment and will meet current requirements. The 40-year old sterilizers, wall autoclave and cart washer in Central Sterile Processing are fully depreciated and will be replaced as part of the project. App., Tab 2 at 5; App., Tab 2 at 1; App., Tab 3 at 12.

11. The Cardiac Rehabilitation area is undersized and struggles to accommodate current volumes. The space on the ground floor of the new building will allow sufficient space for existing and new exercise equipment, patient monitoring and more space for the education room, patient changing rooms and bathrooms. App., Tab 2 at 5.

12. Surgeon offices and exam rooms will be relocated to the second floor of the Read Pavilion. Urology and General Surgery practices will also be relocated to the second floor and consolidated into one surgical office space sharing a common waiting room, check in/out, staff break room and restrooms. This arrangement allows for increased support staff flexibility and coverage due to any temporary staffing shortages and will create efficiencies and minimize travel time for providers. App., Tab 2 at 7-8.

13. The third floor of the new building will house Brattleboro Internal Medicine. The relocation of this practice will resolve an exam room shortage and provides a 2:1 ratio of exam rooms to providers, maximizing efficiencies and minimizing patient wait times. App., Tab 2 at 6.

14. The hospital will continue to use the existing ORs until the new ORs are operational. The plans also allow for phasing of the renovations to the perioperative service area and relocation of the PACU, endoscopy, minor procedure rooms and the anesthesia workroom and equipment storage. App., Tab 2 at 1.

15. Relocation of Brattleboro Internal Medicine to the Read Pavilion frees space on the second floor of the Gannet Building to house three primary care practices: Windham Family

Practice, Brattleboro Family Medicine and Maplewood Family Practice. Locating the three primary care practices in the same building improves patient access, allows for the flexible use of staff and sharing of common areas. App., Tab 2 at 6-7.

16. The hospital expects that improvements in physical space will assist with recruitment of physicians, nurse practitioners, and physician assistants needed to maintain strong primary care and surgery services. App., Tab 2 at 8; Tab 3 at 20-21. The changes will also enhance infection control by separating clean from dirty traffic flow, and upgrading the HVAC systems to meet air exchange requirements, and using materials with antimicrobial properties and state of the art central sterile processing facility. App., Tab 3 at 1.

17. Last, the project includes the purchase and installation of three boilers to replace those installed in 1979 and 1996 that burn #4 oil. The new boilers will burn #2 oil and are equipped to flexibly convert to propane or compressed gas in the future, if economically feasible. Resp. (April 7, 2017) at 5; App., Tab 3 at 25.

18. The hospital engaged Efficiency Vermont in its planning process to achieve energy conservation goals and select energy efficient products and incentive programs. App., Tab 3 at 2.

19. The construction and renovation portions of the project were reviewed by the Board's consulting architect and were found to be compliant with all applicable FGI guidelines.

20. The hospital explored other options for the new construction and renovations. The configuration chosen, unlike other alternatives, allows for optimal location of the ORs and central sterile processing, adequate space for cardiac rehabilitation services and creation of sufficient office space for physicians. App., Tab 3 at 5; Resp. (April 7, 2017) at 4-5.

21. The total cost of all four components of the project is \$22,692,789. App., Tab 1, at 1-4; Tab 2 at 6-7. The project was included in the hospital's capital budget submitted to the Board in FYs 2016 and 2017. *Id.*, Tab 3 at 3.

22. The project will reduce the hospital's operating margin from 2.4% without the project, to 1.2% with the project, although profitability remains positive through the projected period (through 2020). Although liquidity is significantly reduced due to the \$12 million financed with equity, the hospital has been planning for this project for several years and has accumulated the equity to support over half of the project. App., Tab 3 at 4.

23. Increases in net patient revenue (NPR) are projected to remain below 3.5% throughout the projection period, which concludes at the close of 2020. App., Tab 3 at 4. All diagnostic and therapeutic equipment such as x-ray equipment will be reused. Resp. (April 7, 2017) at 5.

24. The hospital will fund the project with \$12,692,789 in equity, including a \$6 million bequest from Ronald Read, and \$10,000,000 financed with tax exempt bonds. The hospital expects that the bonds will have a 2.5% interest rate and a 25-year debt service; the hospital may also utilize a New Market Tax Credit. App. at Table 2, *Debt Financing Arrangement*; Tab 1 at 5.

The hospital expects construction to start in late 2017 with project completion in 2019. App., Tab 1 at 5.

Conclusions of Law

Vermont law outlines eight statutory criteria that an applicant must meet before a CON will issue. The applicant bears the burden to demonstrate that it has met the criteria. G.M.C.B. Rule 4.000, § 4.302.3.

Under the first criterion, the applicant must show that the application is consistent with the Health Resource Allocation Plan (HRAP). The HRAP, last updated in 2009, identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. 18 V.S.A. § 9437(1). We find that the applicant has demonstrated that this project is consistent with the relevant HRAP standards. *See, e.g.*, HRAP Standard (Standard) 1.4 (volume of services is positively correlated to better quality, applicant can maintain appropriate volume, and project will not erode volume at any other Vermont facility); Standard 1.6 (applicant will collect and monitor data relating to quality and outcomes related to the proposed new project); Standard 1.7 (applicant has explained how the project is consistent with evidence-based practice); Standards 1.9, 1.10, 1.11, 1.12 (project is cost-effective, energy efficient and conforms with applicable FGI Guidelines); Standard 2.1 (applicant has explained how proposed project will expand, promote or enhance primary care capacity); Standard 3.4 (project has been included in hospital budget submissions); Standard 3.7 (existing equipment is fully depreciated); Standard 3.24 (no conflicts of interest between the hospital, physicians and equipment purchase.)

We next conclude that the cost of the project is reasonable, satisfying the second criterion. 18 V.S.A. § 9437(2) (project cost must be reasonable because it is sustainable by the applicant, will not cause undue increase in costs of care, and less expensive alternatives are unavailable, unsatisfactory, or not feasible or appropriate). As explained in the application and at hearing, the applicant can sustain the cost of the project notwithstanding a decline in its level of profitability. Though its operating margin will be weak, the applicant projects it will remain positive through 2020, the end of the projection period. Finding ¶ 22. The hospital has planned for the project for several years, can fund more than one-half of the project with equity, and benefits from the generous bequest of Ronald Read, for whom the new building is named. Finding ¶ 24. The hospital will reuse most diagnostic or therapeutic equipment and the project will not cause an undue increase in cost of care, and projects only a modest increase in the number of surgeries in years three and four, with no increases in the number of procedures performed. Findings ¶¶ 6, 8. For the past several years, the hospital has researched and planned for needed upgrades to the facility and boiler plant, and designed the project in light of space constraints on the hospital campus. There is also no less expensive alternative to achieve each of the hospital's identified needs. Findings ¶¶ 20, 22.

The third criterion requires the applicant to demonstrate an "identifiable, existing, or reasonably anticipated need" for the project. 18 V.S.A. § 9437(3). Current space and systems are housed in buildings constructed in 1950 and 1964, and not designed to meet current codes, guidelines and standards. For example, the ORs cannot be expanded in a way that is compliant with FGI Guidelines; the perioperative area is undersized and poorly laid out for required

functions; central sterile processing area does not comply with FGI Guidelines, and the sterilizers are 40 years old. Findings ¶¶ 6, 9-11. There is inadequate space and exam rooms for internal medicine to meet patient volume; the Cardiac Rehabilitation unit is not properly sized, and there is a lack of adequate office/exam space for surgeons, internal medicine practices and primary care practices to accommodate current and future volume needs. Findings ¶¶ 11, 13, 15. In addition, the boilers have reached the end of their useful life, burn #4 oil, and cause vibrations and heat fluctuations in the OR area directly above the boiler room. Findings ¶¶ 4, 9, 17. The construction of the Read Pavilion to house some of these functions, combined with renovations to the perioperative area in the main hospital and relocation of two primary care practices to the Gannet Building, collectively provide solutions to each of these identified needs. Findings ¶¶ 2, 3, 5, 9, 10, 11. Because the applicant has demonstrated that there is an identifiable and existing need for each of the components addressed by this project, this criterion is satisfied.

Under the fourth criterion, the project must either improve the quality of health care, provide greater access for Vermonters, or both. 18 V.S.A. § 9437(4). We are persuaded that the project will improve both access to and quality of health care provided to residents of the hospital's service area. The applicant has shown that the project improves access by logically reorganizing space to meet modern standards and maximizes the work flow for providers, which should assist with recruitment of physicians, nurse practitioners, and physician assistants needed to maintain strong primary care and surgical services. Finding ¶ 16. The applicant has confirmed that surgical volumes will increase only minimally, however, and that its utilization projections are reasonable and that it will meet budget targets. Finding ¶ 6. The project improves quality by enhancing infection control efforts, enlarging areas such as the Cardiac Rehabilitation unit to adequately accommodate equipment, patients, practitioners and staff, and replacing outdated boilers used to heat and cool the entire hospital complex. Findings ¶¶ 4, 11, 16, 17. The applicant has therefore met this criterion.

We further conclude that the project will not have an undue adverse impact on other services provided by the applicant. *See* 18 V.S.A. § 9437(5). The impetus for the project is to update facility space and functions to meet current requirements and patient need and organize space more efficiently, improving the experience for patients, physicians and staff. Findings ¶¶ 2, 3, 5-7, 9-13, 20. The applicant has thus met the fifth criterion as well.

The sixth statutory criterion, that the project serves the public good, has been met for all the reasons discussed throughout this decision. 18 V.S.A. § 9437(6). The seventh criterion is not applicable as there is only minimal change to the locations of services, and therefore no change in the availability of transportation services to the hospital's campus. 18 V.S.A. § 9437(7) (applicant must consider availability of transportation services). The final criterion relates specifically to new health care technology projects, and to the extent it is relevant, we conclude it has been satisfied.

Based on the above, we issue a certificate of need to the applicant, subject to the conditions outlined in that document, attached.

SO ORDERED.

Dated: October 2, 2017 at Montpelier, Vermont

s/ Kevin Mullin, Chair)
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s/ Cornelius Hogan)
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s/ Jessica Holmes)
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s/ Robin Lunge)
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s/ Maureen Suiter)

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OF VERMONT

Filed: October 2, 2017

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CERTIFICATE OF NEED

The Board issues this Certificate of Need to Brattleboro Memorial Hospital (BMH, or the applicant), pursuant to 18 V.S.A. § 9431 *et seq.* based on the Findings of Fact and Conclusions of Law in the Statement of Decision and Order issued today in this docket, and incorporated herein. This Certificate of Need is subject to the following terms and conditions:

1. BMH must comply with all requirements, including growth caps and targets, contained in its Hospital Budget Orders for FY 2016 and throughout the implementation period as set forth in Condition 4, below.
2. BMH shall not increase the rates it charges to commercial payers to fund any expenses related to project costs, including, but not limited to, project cost overruns.
3. BMH shall comply with the scope of the project as described in the application and other materials it has submitted to the Board relevant to this project. This Certificate of Need is limited to the project and activities described therein.
4. The project as described in the application shall be fully implemented within three years of the date of this Certificate of Need or the Certificate of Need shall become invalid and deemed revoked.
5. Noncompliance with any provision of this Certificate of Need or applicable ordinances, rules, laws and regulations shall constitute a violation of this Certificate of Need and may be cause for enforcement action pursuant to 18 V.S.A. §§ 9445, 9374(i), and any other applicable law.
6. This Certificate of Need is not transferable or assignable and is issued only for the premises and entity named in the application.
7. If the applicant contemplates or becomes aware of a potential or actual nonmaterial change, as defined in 18 V.S.A. § 9432(12), or a material change as defined in 18 V.S.A. § 9432(11), to the scope or cost of the project described in its application and as designated in this Certificate of Need, it shall file a notice of such change immediately with the Board. The Board shall review the proposed change and advise the applicant whether the proposed change is subject to review.
8. The applicant shall file implementation reports with the Board at six-month intervals starting from the date of this CON through the time the project is fully operational and all invoices

are paid. Implementation reports shall include information and analysis demonstrating that the project is in conformance with its scope as described in the application, identify any changes to its financing, and include the following:

- a. any updates or changes to its boiler system, fuel source, or method for heating and cooling the facility, including the feasibility of roof top solar installations and heat pumps;
 - b. information on increases/decreases in the number of FTEs, by type, related to the project;
 - c. information on efficiencies and administrative savings that may be achieved by co-location and consolidation of physician practices;
 - d. infection rates, which the applicant anticipates will be reduced as a result of the project;
 - e. a spreadsheet breaking down expenditures for each project component (*see* Table 1 in the application), that includes: the total approved expenditure for each item; the expenditure for the previous six-month implementation period covered (include reporting dates); the expenditure for the six-month implementation period covered (include reporting dates); the total dollar amount expended to date (inclusive of all prior reporting periods); the total dollar amount remaining; and the percentage over or under budget for each line item.
9. The Board may, after notice and an opportunity for the applicant to be heard, make such further orders as are necessary or desirable to accomplish the purposes of this Certificate of Need, and to ensure compliance with the terms and conditions of this Certificate of Need.
10. All reports, notices, forms, information or submissions of any kind required to be submitted to the Board as a condition of this Certificate of Need shall be signed by the Applicant and verified by the chief executive officer, or by his or her designated representative.

The conditions and requirements contained in this Certificate of Need shall remain in effect for the duration of the reporting period defined in paragraph 8, above.

SO ORDERED.

Dated: October 2, 2017 at Montpelier, Vermont

s/ Kevin Mullin, Chair)
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s/ Cornelius Hogan)
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s/ Jessica Holmes)
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s/ Robin Lunge)
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s/ Maureen Usifer)

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Filed: October 2, 2017